

APPEAL NO. 010559

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 30, 2000. The hearing officer determined that: (1) appellant (claimant) sustained a repetitive trauma voice injury at work; (2) the date of injury is _____; (3) claimant reported the injury on _____, and did not have good cause for failing to timely report the injury; and (4) claimant did not have disability. Claimant appealed the adverse determinations on sufficiency grounds. Respondent self-insured ("carrier" herein) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant testified that she is a choir teacher and that she had experienced vocal nodules in the late '80s and early '90s. She said that, at that time, she experienced voice weakening and hoarseness. Claimant said her condition resolved, for the most part, after she had surgery to remove the nodules. Claimant testified that she still underwent treatment in 1994, and possibly 1995, for that condition. Claimant said that in April 1999, she was experiencing a stressful period because she was working a lot with the students for a contest. She said she began to experience hoarseness, so she went to Dr. B. Dr. B diagnosed chronic hoarseness due to prior voice abuse and surgery on her vocal cords. Claimant said she knew at that time that she had symptoms of hoarseness and that last time she experienced that, she had nodules. Claimant testified that she thought the problems could be work related or it "could just be vocal fatigue."

Claimant said her hoarseness resolved but returned in the fall of 1999 when she went back to work as a teacher after summer break. Claimant agreed that she had stated to carrier that by October and November 1999, she was losing her voice by Wednesday of each week, when earlier in the school year she had not lost her voice until Friday of each week. Claimant said her voice was weak due to excessive talking and singing and that she went to see Dr. L. In a November 12, 1999, report, Dr. L stated that claimant complained of a raspy voice, said her voice was getting worse, and that she would like to have her vocal cords evaluated. Claimant was again diagnosed with nodules in mid-_____.
_____.

Claimant said she had experienced hoarseness in 1996 and 1997, but that it always went away. She testified that in the fall of 1999, she realized that her voice was not coming back, so she went to see Dr. L. Claimant said she had suspicions in the fall of 1999 that her voice problems were caused by work, but that she was not sure. She testified that she was not doing anything else voice-related outside of work and agreed that it was "logical to assume in _____" that the problems with her voice were work related.

Claimant contends the hearing officer erred in determining that her occupational disease “included both nodules and varices.” Claimant asserts that the varices condition is separate from the nodule condition and that she did not develop varices until _____. There was medical evidence from Dr. S that claimant had a “new” injury that developed in _____. Claimant’s speech-language pathologist, Ms. D, testified that claimant’s varices developed later in _____. However, in a February 28, 2000, report, Ms. D stated that a videostroboscopy showed “bilateral TVC edema and varices.” Ms. D stated that the varices seen in _____ was “blushing” or redness and inflammation, and that it was “nothing to worry about.” Ms. D said she thought it would resolve, but it worsened and that _____ was the first time the varices were exacerbated. Ms. D said the varices were veins that enlarged and limited vocal cord movement.

In this case, the hearing officer stated that the varices could be seen in the first laryngoscopy and were “part and parcel of the occupational disease injury.” Although Ms. D divided varices conditions into “blushing” versus a more serious swelling, apparently claimant did have a form of varices in _____. We perceive no reversible error in the hearing officer’s statements and determination in this regard.

Claimant contends the hearing officer erred in determining that claimant knew or should have known by _____, that her “vocal problem may be related to her employment.” Claimant complains that a nodule problem is not “something that one can self-diagnose.” Claimant complained that hoarseness was not unusual and that her voice always came back. However, claimant said she had suspicions in the fall of 1999 that her voice problems were caused by work, but that she was not sure. She testified that she was not doing anything else voice-related outside of work and agreed that it was “logical to assume in _____” that the problems with her voice were work related. We conclude that the hearing officer’s determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant complains that the hearing officer did not make a finding of fact whether claimant trivialized her condition and thus had good cause for failing to report the injury. The hearing officer determined that an ordinary music teacher in the same or similar situation would have known by the end of _____ that her vocal problem may be related to her employment as a music teacher. However, claimant said that she was in a lot more “vocal distress” during this time and that she decided to see a doctor for her condition. In a November 12, 1999, report, Dr. L stated that claimant wanted to have her vocal cords evaluated. It is very difficult to fault the hearing officer for failing to find trivialization after claimant herself had sought medical care and a vocal cord analysis. This indicates that claimant was not trivializing her condition. See Texas Workers’ Compensation Commission Appeal No. 000722, decided May 22, 2000. We perceive no reversible error.

Claimant contends that the hearing officer failed to consider the evidence that the employer sought to prevent claimant from accurately reporting her injury. Claimant said that after she lost her voice and saw Dr. S in mid-_____, she reported an injury to a

supervisor, but that she was told to see if her voice improved over the winter break. The hearing officer determined that claimant did report the injury on _____. Even though the supervisor did not fill out the appropriate reports, there is no indication that claimant was “prevented” from reporting her injury. We perceive no error.

The hearing officer determined that claimant did sustain a repetitive trauma injury to her vocal cords due to her work. However, he determined that the injury is not compensable because claimant did not timely report it within 30 days of _____. He determined that she did not have disability because the injury is not compensable. We conclude that these determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer’s decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge